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144
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,296	03/27/2004	Xing Fa Wang	XLH8FW	1034
35673	7590	11/02/2006	EXAMINER	
XING FA WANG 16 PALM STREET WORCESTER, MA 01604-3844			SIMS, JASON M	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,296	Applicant(s) WANG, XING FA	
	Examiner Jason M. Sims	Art Unit 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments, filed 6/5/2006, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Applicant has amended their claims, filed 7/5/2006, in response to the office action mailed 3/21/2006.

Claims 1-18 are the current claims hereby under examination.

Response to Arguments

Applicant's arguments, filed 6/5/2006, with respect to the rejection(s) of claim(s) 1-18 under 35 USC 112 first and 35 USC second paragraphs have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Under the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (published in the O.G. notice (1300 OG 142) on 11/22/2005) a

Art Unit: 1631

method that does not result in a physical transformation of matter MAY be statutory where it recites a concrete, tangible and useful result; i.e. a practical application.

Claims 1-18 are drawn to a process. A statutory process must include a step of a physical transformation, or produce a useful, concrete, and tangible result (State Street Bank & Trust Co. v. Signature Financial Group Inc. CAFC 47 USPQ2d 1596 (1998), AT&T Corp. v. Excel Communications Inc. (CAFC 50 USPQ2d 1447 (1999)). In the instant claims, there is no step of physical transformation, thus the Examiner must determine if the instant claims include a useful, concrete, and tangible result.

As noted in State Street Bank & Trust Co. v. Signature Financial Group Inc. CAFC 47 USPQ2d 1596 (1998) below, the statutory category of the claimed subject matter is not relevant to a determination of whether the claimed subject matter produces a useful, concrete, and tangible result:

The question of whether a claim encompasses statutory subject matter should not focus on *which* of the four categories of subject matter a claim is directed to 9-- process, machine, manufacture, or composition of matter--but rather on the essential characteristics of the subject matter, in particular, its practical utility. Section 101 specifies that statutory subject matter must also satisfy the other "conditions and requirements" of Title 35, including novelty, nonobviousness, and adequacy of disclosure and notice. See *In re Warmerdam* , 33 F.3d 1354, 1359, 31 USPQ2d 1754, 1757-58 (Fed. Cir. 1994). For purpose of our analysis, as noted above, claim 1 is directed to a machine programmed with the Hub and Spoke software and admittedly produces a "useful, concrete, and tangible result." *Alappat* , 33 F.3d at 1544, 31

Art Unit: 1631

USPQ2d at 1557. This renders it statutory subject matter, even if the useful result is expressed in numbers, such as price, profit, percentage, cost, or loss.

In determining if the claimed subject matter produces a useful, concrete, and tangible result, the Examiner must determine each standard individually. For a claim to be "useful," the claim must produce a result that is specific, and substantial. For a claim to be "concrete," the process must have a result that is reproducible. For a claim to be "tangible," the process must produce a real world result. Furthermore, the claim must be limited only to statutory embodiments.

Claims 1-18 do not produce a tangible result. A tangible result requires that the claim must set forth a practical application to produce a real-world result. This rejection could be overcome by amendment of the claims to recite that a result of the method is outputted to a display or a memory or another computer on a network, or outputting the result to a user, or by including a physical transformation.

Conclusion

No Claim is allowed

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Sims, whose telephone number is (571)-272-7540.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang can be reached via telephone (571)-272-0811.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571)-273-8300.

Art Unit: 1631

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

// Jason Sims //

J.S. Brusca 30 October 2006
JOHN S. BRUSCA, PH.D
PRIMARY EXAMINER